

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40916
Docket No. SG-39754
11-3-NRAB-00003-060588
(06-3-588)**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Southern Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:

Claim on behalf of B. Stewart, for compensation for all lost wages, including skill pay, with all rights and benefits unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it issued the harsh and excessive discipline of a 20-day suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on July 18, 2005. Carrier’s File No. K06056036. General Chairman’s File No. 05-086-KCS-185. BRS File Case No. 13636-KCS.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was disciplined for failure to report for work at the designated time and place on July 5, 2005, at Heavener, Oklahoma. At the time of the incident, the Claimant had some six years of service.

Our review of the unique facts involved in this record compels us to find it to be lacking in substantial evidence to support the Carrier's action. Accordingly, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 10th day of March 2011.